

CHIEF OF DETECTIVES

NOTICE

1.8

October 12, 2018

TO: All Concerned Personnel

FROM: Chief of Detectives

SUBJECT: ENFORCEMENT ACTIONS RELATED TO UNDOCUMENTED PERSONS – REVISED; AND, GUIDELINES FOR ENFORCEMENT ACTIONS RELATED TO CRIMINAL IMMIGRATION OFFENSES

This Notice supersedes Chief of Detectives Notice titled, *Enforcement Actions Related to Undocumented Persons*, dated May 17, 2017.

This Notice provides guidance to Los Angeles Police Department personnel on enforcement actions related to persons wanted for federal immigration crimes. The Department maintains its steadfast commitment to public safety through community partnerships, regardless of immigration status, while adhering to the law.

EXISTING POLICY

Per Department Manual Sections 1/390, *Undocumented Immigrants* and 4/264.50, *Enforcement of United States Immigration Laws*, officers are prohibited from initiating police action with the objective of determining a person's civil immigration status.

The California Transparency and Responsibility Using State Tools (TRUST) Act further restricts a local law enforcement agency from honoring an Immigration Detainer Notice of Action, also known as an "Immigration and Customs Enforcement (ICE) Detainer Request," which asks a local agency to voluntarily extend an arrestee's time in custody for up to 48 hours beyond the time the person would otherwise be released. An ICE Detainer Request is based on Department of Homeland Security's determination that an individual may be subject to civil immigration proceedings such as removal or deportation from the United States. It is neither an arrest warrant nor judicial order based on probable cause that the individual has committed a federal or state crime.

In compliance with the California TRUST Act and recent federal court decisions, the Department modified its procedure regarding ICE Detainer Requests as reflected in Custody Services Division (CSD), Jail Operations Manual Section 2/501, *Immigration and Customs Enforcement (ICE) Hold Pending Procedure*. The CSD will not detain an individual based on an ICE Detainer Request without one of the following:

- Judicial determination of probable cause for the detainer; or,
- Arrest warrant issued by a judicial officer.

GUIDELINES AND PROCEDURES

This Notice provides guidance for officers who discover through the National Crime Information Center (NCIC) database that individuals are wanted by federal authorities for a civil or criminal immigration offense. When an NCIC query is conducted, it is important to identify and distinguish a civil ICE Detainer Request from a criminal arrest warrant:

- The **NCIC Wanted Persons Record** includes individuals with outstanding federal or state criminal arrest warrants that have been issued by a judicial magistrate.
- The **NCIC Immigration Violator's Record** includes ICE Detainer Requests for individuals who may be subject to removal from the United States based on their civil immigration status and persons who may have violated federal criminal immigration laws for illegally re-entering the United States after a conviction for a criminal offense.

NOTE: Officers are reminded that initial NCIC queries shall only be made for legitimate law enforcement purposes unrelated to determining a person's immigration status.

To determine whether an individual with an NCIC Immigration Violator's Record is wanted, officers shall perform the following (See Example No. 1):

1. Check the first letter of the alphanumeric **NIC** number. A letter, "N" identifies an ICE Immigration Detainer Request while a letter "W" followed by a nine-digit number indicates a criminal arrest warrant;
2. Check the Originating Agency Identifier (**ORI**) number or name of the agency;
3. Search for the word "**DETAINDER**" within the NCIC printout; and,
4. Check if the subject is a "**DEPORTED CRIMINAL**" classified as an "**AGGRAVATED FELON**."

PROCEDURES FOR AN INDIVIDUAL WANTED BASED ON A CRIMINAL ARREST WARRANT

If the individual's NCIC record indicates an outstanding criminal arrest warrant for an immigration-related offense, officers shall follow the same procedures for warrant arrests as set forth in Department Manual Section 4/611.10, *Positive Response to CWS Inquiry – Employee's Responsibility* and Arrest Report – Field Notebook Divider, Form 18.32.00 (08/15) – Warrant Arrests.

PROCEDURE FOR AN INDIVIDUAL IDENTIFIED AS A “DEPORTED CRIMINAL/ AGGRAVATED FELON”

If an NCIC Immigration Violator’s Record inquiry indicates a person is a “Deported Criminal/Aggravated Felon,” an officer may detain the individual. The detention must be for a reasonable period to investigate whether the individual may be in violation of Title 8, United States Code Section 1326(a), (b)(2) (Illegal Re-Entry after Conviction of an Aggravated Felony), a felony criminal offense. The following procedures shall be followed:

- The person was initially contacted by Department personnel for reasons unrelated to immigration enforcement;
- The person is not a victim of, or a witness to, a crime or can otherwise provide evidence in a criminal investigation;
- Check the individual’s criminal history information in Consolidated Criminal History Reporting System (CCHRS), California Information and Identification Number (CII) and/or the Federal Bureau of Investigation criminal arrest records for indicators of prior removals, or deportations;
- Determine if the individual had been previously convicted of an aggravated felony offense (arrests are insufficient);¹
- Determine if the prior conviction for an aggravated felony is also classified as a “serious or violent felony” as defined in California Penal Code §§ 1192.7(c) and 667.5(c);² and,
- Immediately advise the Area watch commander.

Note: Department personnel shall release the person if, during the detention, it is determined that the prior felony conviction is neither a serious or violent felony under California law and the person is not otherwise subject to arrest or detention based on a non-immigration local, state or federal offense.

AREA WATCH COMMANDER’S RESPONSIBILITIES

- Review all supporting documents;
- Contact the Department Operations Center (DOC) Communication Division to be connected with the Department’s Immigration Liaison Officer (ILO) to request an approval to
(1) further detain the individual, and (2) contact the ICE’s Law Enforcement Support Center (LESC);

¹ “Aggravated felonies” include murder, rape, sexual abuse of a minor, illicit trafficking in controlled substances, firearms/destructive devices, laundering monetary instruments, explosive materials offenses, crimes of violence, theft/burglary/receipt of stolen property, demand for or receipt of ransom, child pornography, RICO, owning/controlling/managing/supervising of a prostitution business, slavery/involuntary servitude, human trafficking gathering/transmitting national defense information, offense involving fraud or deceit causing loss to victim over \$10,000, alien smuggling, improper entry/reentry by alien previously deported, falsely making/forging/counterfeiting/mutilating/altering passport or instrument, failure to appear for service of sentence when underlying offense punishable by five years or more, commercial bribery/counterfeiting/forgery/trafficking in vehicles, obstruction of justice/perjury or subornation of perjury/bribery of witness, failure to appear after court order to answer felony charges, and attempt or conspiracy to commit any of the above offenses. See 8 U.S.C. § 1101(a)(43).

² See Appendix for a list of serious and violent felonies under California law.

- If approved by the ILO, advise the Area Commanding Officer and notify the LESC at the telephone number indicated on the Immigration Violator's Record NCIC hit confirmation printout;
- Advise the LESC that the detained individual will be held for a reasonable period, not exceeding four hours, unless the person is detained for an unrelated criminal offense. Any temporary detention beyond four hours must be pre-approved by the ILO;
- If the individual is being booked for an unrelated criminal offense, notify the Commanding Officer of CSD;
- Document the results in the Watch Commander's Daily Report, Form 15.80.00 (watch commander's log); and,
- Document the immigration enforcement action on the "Immigration Enforcement Report" pursuant to Operations Order No. 3, Immigration Enforcement Reporting Procedures, dated March 19, 2018.

AREA COMMANDING OFFICER'S RESPONSIBILITY

- Ensure proper notifications are made to the appropriate bureau commanding officers; and,
- Review and approve the "Immigration Enforcement Report" and supporting documentation pursuant to Operations Order No. 3, Immigration Enforcement Reporting Procedures, dated March 19, 2018.

DEPARTMENT IMMIGRATION LIAISON OFFICER'S RESPONSIBILITIES

- Review and approve all documentation pertaining to the immigration enforcement actions; and,
- Maintain records of the documentation.

PROCEDURES FOR AN INDIVIDUAL NOT IDENTIFIED AS WANTED BASED ON A CRIMINAL ARREST WARRANT OR AS A "DEPORTED CRIMINAL/AGGRAVATED FELON"

If an NCIC record neither indicates an outstanding criminal arrest warrant nor identifies the individual as a "Deported Criminal/Aggravated Felon," the individual shall be immediately released from custody unless reasonable suspicion or probable cause exists to detain or arrest the individual for an unrelated criminal charge.

All Concerned Personnel

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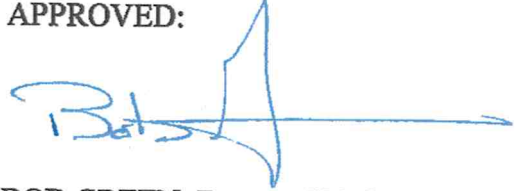
1.8

Should you have any questions, please contact Investigative Analysis Section, Detective Services Group, at (213) 486-7010.

A handwritten signature in blue ink, appearing to read 'SEAN W. MALINOWSKI', with a large loop at the end.

SEAN W. MALINOWSKI, Deputy Chief
Chief of Detectives

APPROVED:

A handwritten signature in blue ink, appearing to read 'BOB GREEN', with a long horizontal line extending to the right.

BOB GREEN, Deputy Chief
Chief of Staff
Office of the Chief of Police

DISTRIBUTION "A"

Attachments

Example No. 1

IJ

CA0194201

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS. WARNING REGARDING FOLLOWING RECORD - SUBJECT OF NIC / N123456789 IS A PREVIOUSLY DEPORTED FELON. CONTACT LESC AT (877) 999-5372 FOR IMMEDIATE HIT CONFIRMATION AND AVAILABILITY OF BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT DETAINER.

MKE / IMMIGRATION VIOLATION - DEPORTED FELON

ORI / VTICE0900 NAM / DOE, JOHN SEX / M RAC / W POB / MC

DOB / 19890501 HGT / 600 WGT / 195 EYE / BRO HAI / BLK FBI / 987654EC3

SKN / MED SMT / TAT L ARM

FPC / UCUCUCUCUCUCUCUCUCUCUC MNU / AR - A82031465

OFF / SUBJECT IS A DEPORTED CRIMINAL / AGGRAVATED FELON

OCA / A085274196

VLD / 20160504

DNA / N

ORI IS BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, LAW
ENFORCEMENT SUPPORT CENTER 877 999-5372

DOB / 19890505

DOB / 19880501

AKA / DOE, JON

AKA / DOE, JOHNNY

AKA / DOE, JONATHAN

AKA / DOE, JUAN

AKA / GARCIA, JOHN

AKA / GARCIA, JUAN

SMT / TAT L SHLD

SMT / TAT R ARM

SMT / TAT R SHLD

MNU / AR - A085274196

MNU / AR - A85274196

NIC / N123456789 DTE / 20130615 1430 EDT DLU / 20160504 1815 EDT
 **** THIS RECORD IS UNCLASSIFIED ****

**** THIS RECORD MAY ONLY BE USED BY CRIMINAL JUSTICE AGENCIES
FOR CRIMINAL JUSTICE PURPOSES.

END OF IMMIGRATION VIOLATOR FILE RESPONSE.

OUTPUT MSG 0403, FROM HT63YYYYY04/07/2017 11:32

APPENDIX

Serious Felonies (Cal. Penal Code § 1192.7(c))

Murder or voluntary manslaughter
Mayhem
Rape
Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
Lewd or lascivious act on a child under 14 years of age
Any felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm
Attempted murder
Assault with intent to commit rape or robbery
Assault with a deadly weapon or instrument on a peace officer
Assault by a life prisoner on a non-inmate
Assault with a deadly weapon by an inmate
Arson
Exploding a destructive device or any explosive with intent to injure
Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem
Exploding a destructive device or any explosive with intent to murder
Any burglary of the first degree
Robbery or bank robbery
Kidnapping
Holding of a hostage by a person confined in a state prison
Attempt to commit a felony punishable by death or imprisonment in the state prison for life

Any felony in which the defendant personally used a dangerous or deadly weapon
Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code
Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person
Grand theft involving a firearm
Carjacking
Any felony offense, which would also constitute a felony violation of Section 186.22
Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220
Throwing acid or flammable substances, in violation of Section 244
Assault with a deadly weapon, firearm, machine gun, assault weapon, or semi-automatic firearm or assault on a peace officer or firefighter, in violation of Section 245
Assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5
Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246
Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1
Continuous sexual abuse of a child, in violation of Section 288.5
Shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100
Intimidation of victims or witnesses, in violation of Section 136.1
Criminal threats, in violation of Section 422
Any attempt to commit a crime listed in this subdivision other than an assault
Any violation of Section 12022.53
A violation of subdivision (b) or (c) of Section 11418
Any conspiracy to commit an offense described in this subdivision.

Violent Felonies (Cal. Penal Code § 667.5(c))

Murder or voluntary manslaughter
Mayhem
Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262
Sodomy as defined in subdivision (c) or (d) of Section 286
Oral copulation as defined in subdivision (c) or (d) of Section 288a
Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288
Any felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55
Any robbery
Arson, in violation of subdivision (a) or (b) of Section 451
Sexual penetration as defined in subdivision (a) or (j) of Section 289
Attempted murder
A violation of Section 18745, 18750, or 18755
Kidnapping
Assault with the intent to commit a specified felony, in violation of Section 220
Continuous sexual abuse of a child, in violation of Section 288.5
Carjacking, as defined in subdivision (a) of Section 215
Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1
Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22
Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22
Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary
Any violation of Section 12022.53
A violation of subdivision (b) or (c) of Section 11418